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10/031,789	06/17/2002	Marcus Davidsson	P2877US00	8548

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DITTHAVONG MORI & STEINER, P.C.  
918 Prince Street  
Alexandria, VA 22314

EXAMINER
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RABOVIANSKI, JIVKA A

ART UNIT	PAPER NUMBER
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2426

NOTIFICATION DATE	DELIVERY MODE
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03/18/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@dcpatent.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/031,789	<b>Applicant(s)</b> DAVIDSSON ET AL.	
	<b>Examiner</b> JIVKA RABOVIANSKI	<b>Art Unit</b> 2426	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39 - 62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39 - 62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is in response to an AMENDMENT entered December 14, 2009 for the patent application 10/031789 filed on June 17, 2002.
2. The Previous Office Action of September 14, 2009 is fully incorporated into this Final Office Action by reference.

### ***Status of Claims***

3. Claims 39 - 62 are pending  
Claims 1 -38 are cancelled.  
Claims 39, 41, 42, 46, 47, 48, 50 and 61 are amended in this amendment.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claims 39 – 48, 50 – 59 and 61 - 62 are rejected under 35**

**U.S.C. 103(a) as being unpatentable over DeWeese**

**(USPPGPubN20050262542, referred to as DeWeese), and further in**

**view of Kim (USPN 6910186, referred to as Kim), and further in view of Bruck (USPN 7143428, referred to as Bruck).**

**Paragraphs 8 -10 apply.**

Note: U.S. patent Ser. No. 5880731 (referred to as Liles) is incorporated by reference in Kim in its entirety (see Kim – col. 3 lines 22 - 24). This reference is incorporated by reference in its entirety in Kim is treated as part of Kim specification.

**Regarding claims 39, 50 and 61:**

A method, comprising:

DeWeese teaches causing, at least in part, to receive a broadcast video signal at a user apparatus (DeWeese, Fig. 1A).

DeWeese teaches causing, at least in part, to receive text communications from at least one multimedia apparatus (DeWeese, Fig. 1A, [0058]; EN: (DeWeese teaches: Fig. 1A, chat equipment uses text communication [0058] - chat equipment uses text communication).

DeWeese teaches causing, at least in part, to display television programming of said broadcast video signal in a first display area of said user apparatus (DeWeese, [0094], Fig. 9/ television program 202,);

DeWeese teaches determining a theme of the displayed television programming based on retrieved television programming guides associated with the displayed television programming (DeWeese teaches: [0094], [0015], [0009]; EN: [0015] - the television chat system permits users to join chat groups related to television programs, channels, or *categories of programs* that the user may be interested in; chat topic Fig.9/204).

automatically selecting a background image based on said theme; DeWeese teaches that each chat topic relates to issues discussed on currently displayed TV program such as News Program [0119], Fig 16. DeWeese does not explicitly teach that the background image is based on the theme (category, topic). However, Bruck teaches the background region may be used to display a logo (background image) associated with the show, i.e., in the particular example the show is: "Third Rock From the Sun" C 7: L 59 – 67, Fig. 7.

Therefore, it would have been obvious for any person of ordinary skill in the art at the time the invention was made to incorporate the teaching of Bruck into the invention of DeWeese for the purpose of facilitate viewers of television to have more options during watching television programs.

DeWeese teaches causing, at least in part, to displaying display said background image as a background in a second display area of said user apparatus, said displayed background image having a plurality of displayed graphical elements (DeWeese, [0120], Fig. 17/322; EN: [0120] is overlaid by display Fig. 17/322 – channel 4, 324 are multiple graphical elements displayed on the second screen).

DeWeese teaches: causing, at least in part, to display in said second display area, simultaneously with the displayed television programming, a first group of at least one avatar images representing a first group of the other multimedia apparatuses that are tuned to said television programming (DeWeese, Fig. 17/322, 324, Fig. 16/316, 317, 318 a first group of at least one avatar images representing a first group of the other multimedia apparatuses (chat) that are tuned to said television programming).

superimposing text of said text communications on said background image in said second display area close to said at least one displayed avatar image representing a participant that made said text communication. DeWeese teaches television chat, but it does not specifically teach an avatar with a text communication on the background image. Bruck teaches

the background region may be used to display a logo (image), but does not teach avatar image representing a participant. However, Kim teaches Fig. 5A/avatar 142 with a text communication 143 on the background on the screen.

Therefore, it would have been obvious for any person of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim and Bruck and DeWeese into the invention of DeWeese for the purpose of facilitate using a chat interactive icons simultaneously with a broadcast television.

**Regarding claims 40, 51 and 62:**

The method of claim 39, wherein said text remains displayed superimposed on top of said background close to said at least one avatar image until another text communication is received from the participant. (DeWeese teaches a text on the top of the background Fig. 16/318, Fig. 16/317).

**Regarding claims 41 and 52:**

The method of claim 39, wherein displaying the first group of the at least one avatar images comprises:

causing, at least in part, to display in said second display area, simultaneously with the displayed television programming, a second group of at least one avatar images representing a second group of the other multimedia apparatuses at least some of which are tuned to a different television programming than said television programming. DeWeese teaches Fig. 16/317 – a second area; Fig. 16/315 a television program where different avatars on the display; [0107] live video images of various users in a chat group can be displayed on display screen 240 in display regions 241-245, but the reference does not specifically disclose two different avatars on the same background. However, Kim teaches two different avatars on the same background Fig. 7C/162, 142 and 161.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim into the invention of DeWeese for the purpose of facilitate viewers in using a chat icons with text simultaneously with a broadcast television.

**Regarding claims 42 and 53:**

DeWeese teaches selecting one of the avatar images of the first or second group (DeWeese, Fig. 5/152, 154 and 156: EN: selectable icons representing participants in the chat.)



DeWeese teaches causing, at least in part, to display, simultaneously with said text, said selected avatar image superimposed on top of said background in said second display area ([0119], Fig. 16/318; EN: the video image of a participant in the video chat group is displayed in quadrant of the display. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DeWeese's display screen to receive the selected image on any place on the display screen.

**Regarding claims 43 and 54:**

The method of claim 39, wherein selecting the background image and displaying said background image are both performed at least two times during the broadcast of said television programming. (DeWeese teaches [0119], Fig. 16/318 that the video image of a participant in the video chat group is displayed in quadrant of the display. DeWeese does not explicitly disclose changing the background and avatar image of the same chat participant. However, Kim discloses a chatroom service provider can customize the background to accommodate different organizations col. 14 lines 5 - 12. Liles discloses a database of avatars that the user can select the avatar using selection dialog box 70 Fig. 3.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify DeWeese's chat system with the teaching of changing the background and avatar image of the same chat participant as further taught in Kim and Liles to meet all limitation in claim 43 in order to facilitate users taste to have a different background with a broadcast television.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim and Liles into the invention of DeWeese for the purpose of facilitate users taste to have a different background and image presentation with a broadcast television.

**Regarding claims 44 and 55:**

The method of claim 39, wherein selecting includes selecting said background image from an image database residing in a memory device associated with said user apparatus. DeWeese teaches a chat communication with a television program. DeWeese does not explicitly teach presenting different background in a memory device. However, Kim teaches graphic chatroom designed with a background appropriate for the corresponding avatars (see act 215 in FIG. 9B) col.17 lines 57 -60;

chatroom software that uses tiles for the background has an archive (stored information) C 6: L 12 – 17.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim into the invention of DeWeese for the purpose of facilitate users taste to have a different background and image presentation with a broadcast television.

**Regarding claims 45 and 56:**

The method of claim 39, wherein selecting includes selecting said background image from an image database residing on the Internet. DeWeese teaches, [0107], Fig. 11a, chat communication with a television program and live video images of various users in a chat group. DeWeese does not explicitly teach image from an image database residing on the Internet. However, Kim teaches website that has icons available for use as avatars is illustrated in FIG. 3B see abstract for download background and if participants see an icon they want to use as an avatar at a website (Internet).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim

into the invention of DeWeese for the purpose of facilitate user's taste to have different chat images from a huge database with a broadcast television.

**Regarding claims 46 and 57:**

The method of claim 39, further comprising causing, at least in part, to receive an image database via a multiplexed broadcast stream containing said broadcast video signal, wherein selecting includes selecting said background image from said image database. DeWeese teaches a chat communication with a television program wherein the television chat system permits users to join *chat groups related to television programs*, channels, or categories of programs that the user may be interested in see abstract, Fig. 2A and [0015]. DeWeese does not explicitly teach image from an image database residing on the Internet. However, Kim teaches website that has icons available for use as avatars is illustrated in FIG. 3B and if participants see an icon they want to use as an avatar at a website (Internet). Kim discloses download of a chatroom's background - abstract, Fig. 3A.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim

into the invention of DeWeese for the purpose of facilitate user's taste to have different chat images from a huge database with a broadcast television.

**Regarding claims 47 and 58:**

DeWeese teaches causing, at least in part, to receive at the user multimedia apparatus an indication of an action input to one of the other multimedia apparatuses that is represented by the selected one of the avatar images (DeWeese, Fig. 16/316, 317 and 318 – avatar image);

DeWeese teaches in response to the indication, selecting an action image corresponding to said action input (DeWeese, Fig. 19, Fig. 7/184 [0089], [0133] Fig. 16/ 317 and 316; EN: where the Fig. 16 presents responses from other multimedia apparatuses; Fig. 19, Fig. 7/184 and [0089], [0133] teach that an option is highlighted to indicate that it has been selected by the sender user. The sender user can use arrow keys on his remote control to select option. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the highlighting an option on the display to indicate that the user has chosen to have the same action such as selecting an image.

DeWeese teaches causing, at least in part, to display said action image superimposed on top of said background in said second display area (DeWeese, Fig. 16 shows television program on the upper left of the main screen and image background 316 on the upper top right of the screen with chat participants).

**Regarding claims 48 and 59:**

DeWeese teaches causing, at least in part, to receive an indication of an action input to one of the other multimedia apparatuses that is represented by the selected one of the avatar images (DeWeese, [0089], [0133]; EN: display on the television screen the image of the person who is currently speaking from another multimedia apparatuses and an option is highlighted (a region on the display – image) to indicate that it has been selected by the sender user.

in response to the indication, selecting an action image corresponding to said action input. DeWeese teaches display on the television screen the image. DeWeese does not explicitly teach interactive image on the screen in response to establish a communication. However, Kim teaches interactive avatar Fig. 8C/191.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Kim into the invention of DeWeese for the purpose of facilitate user's taste to have different chat images from a huge database with a broadcast television.

DeWeese teaches causing, at least in part, to display said action image superimposed on top of said television programming in said first display area (DeWeese, [0089], [0133]; EN: teaches that an option is highlighted (a region on the display – image) to indicate that it has been selected by the sender user).

**6. Claims 49 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over DeWeese (USPPBubN20050262542, referred to as DeWeese), and further in view of Kim (USPN 6910186, referred to as Kim), and in view of Bruck (USPN 7143428, referred to as Bruck), and further in view of Bickmore (USPN 6466213, referred to as Bickmore).**

**Regarding claims 49 and 60:**

The apparatus of claim 59, wherein the apparatus is further configured to control transparently superimposing of said action image over said television programming. DeWeese, Kim and Bruck do not teach a

transparent icon overlaid on the screen. However, Bickmore teaches, Fig. 4 and the description about Fig. 4 in the Bickmore's specification, a Graphics Interchange Format (GIF) image can be loaded, made semi-transparent and overlaid into the display area see.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Bickmore into the invention of DeWeese for the purpose of facilitate users in using a chat while watching a broadcast television.

### ***Response to Arguments***

7. Applicant's arguments filed December 14, 2009 related to claims 39 - 62 have been fully considered but they are not persuasive.

#### **In reference to Applicant's argument:**

The cited portion of Kim merely teaches that "an organization may set up a chatroom (also called 'organizational chatroom') with a background that is related to (e.g. has the same trade dress as) its product or service, and use an organizational avatar as the host of the organizational chatroom" (See, col. 5 lines 62-66). In other words, Kim only discloses, in generalities, that an organization which sets up a chatroom can decide the background. In contrast, independent claims recites that background is automatically selected based on the theme, which is determined based on retrieved television programming guides associated with the displayed television programming. Therefore, the art fails to disclose the recited feature, "automatically selecting a background image based on said theme."

#### **Examiner's Response:**



DeWeese teaches that each chat topic relates to issues discussed on currently displayed TV program such as News Program [0119], Fig 16.

DeWeese does not explicitly teach that the background image is based on the theme (category, topic). Kim teaches, summary of the invention Fig.

5A/avatar 142, on a television screen an image that represents a live person communicating with one or more users with a text communication 143 on the background on the screen; C 9: L 1 – 7, the person using image as an avatar (also called "organizational avatar"). Bruck teaches, C 7: L 59 – 67, Fig. 7, the background region may be used to display a logo associated with the show, i.e., in the particular example the show is: "Third Rock From the Sun". It is not necessary that the prior art suggest the combination to achieve the same advantage or result discovered by applicant. See, e.g., *In re Kahn*, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006); MPEP 2144.

### ***Examination Considerations***

8. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997).

Limitations appearing in the specification but not recited in the claim are not read into the claim. In re Prater, 415 F.2d, 1393, 1404-05, 162 USPQ 541,550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

9. Examiner's Notes are provided with the cited references to prior art to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

10. Unless otherwise annotated, Examiner's statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face

of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

11. Examiner's Opinion: paragraphs 8 - 10 apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

***Prior Arts in Record***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- DeWeese, USPPBub N 20050262542
- Kim, USPN 6910186
- Bickmore, USPN 6466213
- Liles, USPN 5880731
- Bruck USPN 7143428

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a

first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### ***Contact***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jivka Rabovianski whose telephone number is (571) 270-1845. The examiner can normally be reached on M-F 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JOSEPH HIRL can be reached on (571) 272-3685. Customer Service can be reached at (571) 272-2600. The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jivka Rabovianski/

March 9, 2010

/Joseph P. Hirl/  
Supervisory Patent Examiner, Art Unit 2426  
March 11, 2010